

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

JOE DELGADILLO,	:	
Plaintiff	:	CIVIL ACTION NO. 3:16-41
v.	:	(JUDGE MANNION)
COMMONWEALTH OF	:	
PENNSYLVANIA DEPARTMENT	:	
OF CORRECTIONS, <u>et al.</u>,	:	
Defendants	:	

ORDER

Pending before the court is the report of Magistrate Judge Karoline Mehalchick which recommends that the defendants' motion for summary judgment be granted in part and denied in part. (Doc. 69). With the time for doing so having passed, neither party has filed objections to Judge Mehalchick's report. Upon review, the court will adopt Judge Mehalchick's report in its entirety.

The plaintiff filed the instant action alleging violations of his Eighth Amendment rights in relation to a hand injury he sustained at the State Correctional Institution at Camp Hill. The remaining defendants, Sergeant Stubbs, Corrections Officer Kerstetter and Corrections Officer Snyder, filed the instant motion for summary judgment first arguing that the plaintiff's Eighth Amendment claim against them was barred by the applicable statute of limitations. Moreover, the defendants argue that the plaintiff's Eighth Amendment claim fails because he has failed to demonstrate any deliberate

indifference on their part.

In reviewing the record in this action, Judge Mehalchick concludes that the plaintiff's Eighth Amendment claim against the moving defendants is not barred by the applicable statute of limitations as the operative second amended complaint relates back to the initial complaint which was timely filed. As such, Judge Mehalchick recommends that the defendants' motion for summary judgment be denied on this basis. Judge Mehalchick further concludes, however, that the plaintiff has, in fact, failed to demonstrate any deliberate indifference on the part of the moving defendants in order to sustain his Eighth Amendment claim on the merits. As such, she recommends that the moving defendants' motion for summary judgment be granted on this basis. Neither party has objected to Judge Mehalchick's report and recommendation.

When no objections are filed to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the

magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

The undersigned has reviewed the record in this action and finds no clear error of record. Moreover, the undersigned agrees with the sound reasoning which led Judge Mehalchick to conclude that the defendants' motion for summary judgment should be granted in part and denied in part. Judge Mehalchick's report and recommendation with therefore be adopted in its entirety.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

(1) The report and recommendation of Judge Mehalchick, **(Doc. 69)**, is **ADOPTED IN ITS ENTIRETY**.

(2) The defendants' motion for summary judgment, **(Doc. 59)**, is **GRANTED IN PART AND DENIED IN PART**. The motion is **GRANTED** as to the merits of the plaintiff's Eighth Amendment claim and **DENIED** to the extent that it is argued that the plaintiff's claim is barred by the applicable statute of limitations.

(3) The Clerk of Court is directed to **ENTER SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS STUBBS, KERSTETTER AND SNYDER AND AGAINST THE PLAINTIFF** on the plaintiff's Eighth Amendment claim.

(4) The Clerk of Court is further directed to **CLOSE THIS CASE.**

s/ *Malachy E. Mannion*
MALACHY E. MANNION
United States District Judge

Date: September 12, 2019

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